United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

United States Court of Appeals
For the
District of Columbia Circuit

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

FILED NOV 15 1956

Joseph W. Stewart
CLERK

ISAAC F. HILL,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

No. 13,441

878

REPORT OF AMICUS CURIAE

By order dated October 15, 1956, the undersigned was appointed amicus curiae "to file a report showing whether in his opinion there is a substantial question involved in this appeal." This action was taken in response to appellant's motion to have a transcript prepared at the expense of the United States and for appointment of counsel.

The Court's order implies that if no substantial question is found at this time appellant's motion will be denied, and his appeal thereby effectively terminated. Since the right to appellate review of an appellant with funds does not depend upon such a prior showing of substantial question, this procedure raises a serious constitutional issue under the Supreme Court's recent decision in Griffin v. People of Illinois, 351 U.S. 12 (1956).

This report discusses:

I. The proceedings in this case.

II. Whether a substantial question of law is involved in this appeal.

III. Whether the procedures followed in connection with appellant's application for leave to appeal in forma pauperis conform to relevant constitutional and statutory requirements.

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I - **PROCEEDINGS**

Appellant, and one Juanita J. Wallace were indicted in an eleven-count indictment returned on April 3, 1956. He was acquitted on Count 2, and Counts 4, 9, 10 and 11 were dismissed on appellant's motion. Of the remaining counts, Counts 1 and 5 charged defendants with unlawfully possessing checks stolen from an authorized depository of mail matter, in violation of 18 U.S.C. § 1708; Count 3 charged defendants with uttering a falsely altered bank check, in violation of D.C. Code, § 22-1401; Count 6 charged defendants with forging endorsements on the back of a bank check, in violation of D.C. Code, § 22-1401; Count 7 charged defendants with uttering the forged check described in Count 6 in violation of D.C. Code, § 22-1401; and Count 8 charged defendants with falsely representing that defendant Wallace was an employee of the Department of Agriculture for the purpose of cashing the check described in Count 6, in violation of 18 U.S.C. § 912.

Both defendants originally pled not guilty, but defendant Wallace later changed her plea to guilty. At the close of the trial, Hill moved for acquittal on Counts 1, 2, 5 and 6. This motion was denied, and the case was submitted to the jury which returned a verdict of guilty on Counts 1, 3, 5, 6, 7 and 8. Defendant Wallace received concurrent sentences of one to four years on Counts 1, 7, 5 and 11 and one to three years on Count 8. Execution of these sentences was suspended and she was placed on probation. Hill received consecutive sentences of one to three years on Counts 1, 3 and 5 and concurrent sentences of one to three years on Counts 6 and 7, and six months to eighteen months on Count 8.

On July 7, 1956, Hill filed a notice of appeal and paid the clerk's fee of $5.00. On July 29, he wrote to the clerk of the District Court requesting a transcript at Government

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expense, asserting that his own funds were exhausted. This was treated by the court as a motion for leave to proceed in forma pauperis and the following order was filed by the trial judge, Judge Pine:

> Upon consideration of a letter from defendant addressed to the Clerk of the Court, filed July 31, 1956, in the nature of a motion for transcript and for appointment of counsel on appeal in forma pauperis, pursuant to Title 28, Section 1915, U.S.C., and it appearing to the Court that there is no substantial question of law involved and that said motion is not taken in good faith as that term has been construed in authoritative decisions, it is, by the Court, this 9th day of September, 1956:
>
> ORDERED that the said motion be and it is hereby denied.

The present motion followed denial of Hill's motion in the District Court.

II - EXISTENCE OF SUBSTANTIAL QUESTION

So far as amicus curiae has been able to ascertain without the aid of a transcript,[1/] there are two possibly substantial questions involved in this appeal. These are (a) the insufficiency of the evidence to establish violations charged in Counts 1 and 5 of the indictment and, (b) the court's failure to advise the jury that it should not convict solely upon the uncorroborated testimony of the accomplice, Wallace.

(a) Counts 1 and 5 charged defendants with unlawfully possessing bank checks stolen from an authorized mail depository, in violation of 18 U.S.C. § 1708. An essential element of this crime is a prior stealing from the mail, and it has been held that an indictment which fails to allege a mailing does not

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1/ The information upon which this report is based came from interviews with the appellant, himself, his attorney, Curtis P. Mitchell, Assistant United States Attorney Titus, and Judge Pine. While these men were cooperative, none had either notes or a sufficiently vivid recollection to be able to present an adequately detailed account of the trial held some four months earlier. In preparing this report, amicus had also consulted the District Court file and docket sheet, the United States Attorney's file, and the pre-sentence report.

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charge an offense. United States v. Askey, 108 F. Supp. 408, 409-10 (S.D. Tex. 1952). No such deficiency in the present indictment is claimed, but Mr. Mitchell, counsel for appellant at the trial, has raised a question as to the sufficiency of the evidence of the requisite mailing. With respect to the checks involved in Counts 1 and 5, it is asserted that the only witnesses called by the Government to prove the mailings were the secretaries to the makers of the respective checks; and, in each case, the secretary was unable to state unequivocally that she had placed the check in the mail. Counsel moved for an acquittal on these counts, but the motion was denied. In a related case against the present appellant (Cr. No. 353-56), a motion for acquittal based upon an assertedly similar lack of proof was granted by Chief Judge Laws. No transcript is available, but the Assistant United States Attorney who tried both cases confirms that Judge Laws dismissed the unlawful possession counts in No. 353-56.

It is, of course, elementary that all elements of a crime must be proved beyond a reasonable doubt. Christoffel v. United States, 338 U.S. 84, 89 (1949); see Maynard v. United States, 94 U.S. App. D.C. 347, 352, 215 F.2d 336, 341, (1954). Hence, if the record sustains the claim that there was no evidence upon which a jury could have found beyond a reasonable doubt that the checks had been mailed, the trial court erred in refusing to grant the motion for judgment of acquittal on Counts 1 and 5. Curley v. United States, 81 U.S. App. 389, 392, 160 F.2d 229, 232 (1947), cert. denied, 331 U.S. 837. Since appellant received consecutive sentences on Counts 1 and 5, it would be necessary to vacate the judgment and remand the case for resentencing on the remaining counts.

(b) The only evidence in any way implicating Hill was provided by the accomplice, Wallace. Amicus is informed that

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the court instructed the jury to view Wallace's testimony with caution, but gave no instruction that the jury should not convict unless her testimony was corroborated. No objection was made to the instruction given, and it appears to have conformed to counsel's request. The law in the District of Columbia appears somewhat unsettled as to whether a failure to caution the jury that it should find corroboration constitutes reversible error.

In Freed v. United States, 29 App. D.C. 392, 266 Fed. 1012 (1929), this court reversed a conviction on the ground that the trial judge failed to instruct the jury to find corroboration before convicting on the basis of an accomplice's testimony. Reviewing the decisions in this jurisdiction, the court concluded that "for more than 40 years * * * it has been the practice * * * [to bring] directly to the attention of the jury * * * the danger of convicting unless they should find supporting or corroborating evidence." 266 Fed. at 1014-15. In Egan v. United States, 52 App. D.C. 384, 287 Fed. 958, 966 (1922), this court again declared:

> "While there is no absolute rule of law preventing convictions on the testimony of accomplices, if juries believe them * * *, it is undoubtedly the better practice, and the one followed in this District, to call the attention of the jury to the danger of convicting without supporting or corroborating evidence * * *." (Emphasis Supplied)

In Borum v. United States, 61 App. D.C. 4, 56 F.2d 301, 305 (1932), this court said that in view of the Supreme Court's holding in Caminetti v. United States, 242 U.S. 470 (1917), it would not reverse for a failure to instruct that an accomplice's testimony should be corroborated. Nevertheless, the conviction was reversed on the ground that it was "a plain case of obviously false testimony on which no man's life should be taken." In Mendelsohn v. United States, 61 App. D.C. 127, 58 F.2d 532, 534 (1932), this court again cited Caminetti for the view that a

jury may convict on the uncorroborated testimony of accomplices, but admonished that "the better practice is * * * to caution juries to 'require corroborating testimony before giving credence to such evidence'." The conviction was affirmed because, in fact, the trial judge had cautioned the jury to find substantial corroboration before convicting on the accomplice's testimony.

While Caminetti appears to hold that a conviction will not be reversed for a failure to instruct regarding the need for corroboration, this court has read the case as holding merely that it was not error to refuse the instruction in the form there requested. Freed v. United States, supra. Moreover, while Caminetti has been adverted to by this Court, it has never actually prevented a reversal. Thus, in Freed, Caminetti was carefully considered and distinguished; in Borum, the court reversed on another, but related, ground; and in Mendelsohn the court affirmed because an instruction requiring substantial corroboration had actually been given.

In McQuaid v. United States, 91 U.S. App. D.C. 229, 198 F.2d 987 (1952), cert. denied, 344 U.S. 929, this court affirmed a conviction where the trial court appears not to have advised the jury that it should find corroboration before convicting on the basis of accomplice testimony. The question was not fully treated, and this decision seems out of line with the practice for over 70 years in this jurisdiction.

This appeal presents an opportunity for the court to reassess McQuaid and to consider reaffirmation of the practice of requiring an instruction as to the need for corroboration. In the opinion of amicus curiae there are substantial arguments favoring the corroboration rule. As a matter of policy, the rule is founded upon the age-old distrust of an accomplice who "may expect to save himself from punishment by procuring

equal justice to all and special privileges to none in the administration of its criminal law. * * * Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts." 312 U.S. at 19 Fifteen years ago this court anticipated this holding, by way of dictum, in the case of Boykin v. Huff, 73 App. D.C. 378, 385, 121 F.2d 865, 872 (1941), where the court, per Justice Rutledge, declared:

> "When * * * appeals are given as a matter of right to those who are able to pay for them, it may be doubted (though as to this we express no opinion) whether they can be withheld from indigent persons solely on the ground of their poverty or otherwise than so as to give them substantially equal protection with more fortunate citizens."

The principle that indigent defendants must be given an opportunity for appellate review substantially equal to that enjoyed by persons with funds applies here.[4/] Hence, to the extent that the procedures followed in disposing of appellant's application for leave to appeal in forma pauperis have failed to assure such equality, they are invalid and appellant's rights have been infringed accordingly.

A convicted person able to afford a transcript can perfect his appeal with no prior showing of good faith or of merit in the contentions to be made on appeal. Through his counsel he merely files a notice of appeal, orders a transcript from the reporter, designates the record for appeal, and prepares his brief. In due course, the brief and record will come before the court for decision on the merits. In the usual case, the facts disclosed by the record and issues of law presented by the brief will be argued orally before the court, and the appeal

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4/ The Griffin decision is predicated upon due process as well as equal protection, and is plainly applicable in the federal courts. Cf. Bolling v. Sharpe, 347 U.S. 497 (1954).

the conviction of others."[2] Wigmore on Evidence § 2057. Moreover, there is an abundance of authority, in this jurisdiction and elsewhere, approving the practice of instructing the jury not to convict "solely upon the testimony of an accomplice uncorroborated." Wigmore on Evidence § 2056. See also 20 Am. Jur., Evidence § 1235; 53 Am. Jur., Trial § 739; Annot: Accomplices -- Question of Law or Fact, 19 A.L.R. 2d 1352.

III. Validity of Procedures Followed in Connection With Appellant's Application For Leave to Appeal in Forma Pauperis

In the event this court does not find the two questions discussed under Part II to be "substantial," there still remain a number of "substantial questions" regarding the procedure followed in connection with appellant's application for leave to proceed in forma pauperis.

These questions derive principally from the recent case of Griffin v. People of Illinois, 351 U.S. 12 (1956), which held that adequate and effective appellate review was not provided to an indigent defendant where no transcript of proceedings, or other satisfactory report of the trial, was provided at public expense.[3] "Such a denial," Mr. Justice Black said, "is a misfit in a country dedicated to affording

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2/ This has particular relevance to the present case, since the accomplice-witness had pleaded guilty prior to her testimony and, thereafter, received a suspended sentence. Referring to the accomplice, the presentence report on Hill, dated June 25, 1956, stated that her "sentences were suspended and she was placed on probation. * * * In the trial of the defendant she was a valuable witness for the Government."

3/ The Chief Justice and Justices Douglas and Clark concurred in an opinion by Mr. Justice Black. Mr. Justice Frankfurter agreed that a state cannot constitutionally "shut off means of appellate review for indigent defendants" (76 S.Ct. 592), but did not join in Mr. Justice Black's opinion because he thought the rule announced should operate prospectively only.

decided on the merits. Under Rule 39, Fed. R. Crim. P., however, the court has jurisdiction at any time to dismiss an appeal as frivolous if it appears from the record that no reviewable issue of law is presented. United States v. Johnson, 327 U.S. 106, 113 (1946). But no provision is made whereby such lack of substance in the appeal may be found without reference to the record before the court.

The appeal rights of indigents are governed by 28 U.S.C. § 1915, which authorizes any court of the United States to permit an appeal "without prepayment of fees and costs or security therefore" upon an affidavit asserting inability to pay such costs and setting forth the nature of the appeal and affiant's belief that he is entitled to redress. This grant of discretion is qualified, however, by the second paragraph of § 1915, which provides: "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." The following "substantial questions" arise regarding the administration of § 1915 in connection with the present appeal:

A. Does an indigent have a right to counsel in connection with his application in District Court for leave to appeal in forma pauperis?

B. As a matter of due process and of statutory construction, is it valid for the District Court to construe the "good faith" provision of § 1915 as requiring a showing of "substantial question"?

C. As a matter of due process and of statutory construction, is it valid for this court to require a showing of "substantial question" before granting a motion for a transcript and appointment of counsel?

A. At the threshold is the question of whether an indigent who moves under § 1915 for leave to appeal in forma pauperis should have counsel appointed to represent him in connection with that motion. In this case, Hill's letter to the trial judge was the only document filed on his behalf, whereas a substantially more professional opposition was filed on behalf of the Government. The constitutional right to counsel extends to every stage of the proceedings and this court has intimated that a deprivation of that right would be manifested, inter alia, "in connection with the filing of notice of appeal, settling the bill of exceptions, designating the record and assigning errors." Edwards v. United States, 78 U.S. App. D.C. 226, 229, 139 F.2d 365, 368 (1943). As a practical matter, recognition of a right to counsel at this stage would mean merely that in most cases trial counsel, as the one most familiar with the case, would continue to represent the defendant until the District Court had acted on his motion. Accordingly, amicus submits that even if the court does not grant the present motion, there is a substantial question as to whether appellant should at least be given the opportunity to re-present his application in District Court with the assistance of counsel.

B. This court is aware of the ambiguity of the term "good faith." Wheeler v. Reid, 84 U.S. App. D.C. 180, 175 F.2d 829 (1948). It is now fair to say, however, that the ambiguity has been resolved by both this court and the District Court in favor of requiring the indigent would-be appellant to satisfy the trial judge that a "substantial question" is involved in his appeal; and, accordingly, the trial judge's order in the present case stated:

> "* * * it appearing to the Court that there is no substantial question of law involved and that said motion is not taken in good faith as that term has been construed in authoritative decisions, * * * [the motion] * * * is hereby denied."

To like effect is United States v. Durham, 130 F. Supp. 445 (D.D.C. 1955), where the trial judge found "no substantial

question in the point principally urged for granting the motion * * *" and "accordingly, [certified] that the appeal [was] not taken in good faith * * *."

This is certainly not the only possible meaning of "good faith." It could mean simply that the indigent had an honest doubt about the validity of his conviction and was not appealing merely for the sake of delay in execution of his sentence. See, e.g., Wheeler v. Reid, supra, at 830, quoting from the trial judge's certificate. Moreover, there is a possible middle ground. "Substantial question" suggests or implies ultimate correctness rather than the mere possibility thereof. Thus, this court frequently decides questions which upon analysis prove to be without substance, yet are not so patently frivolous as to warrant dismissal of the appeal under Rule 39, F.R. Crim. P. It is submitted, therefore, that District judges, exercising their proper function under § 1915, should merely decide whether there is a contention, honestly made, that is not so patently frivolous that this court would have to dismiss the appeal.[5/] Indigents, like others, should have the right to have losing as well as wining contentions heard on appeal.

There is a substantial statutory basis for holding that "good faith," as used in 28 U.S.C. § 1915, means something less than the existence of a "substantial question." For only by such a definition can § 1915 be reconciled with 28 U.S.C. § 753 (f), relating to the preparation of transcripts at the expense of the United States in forma pauperis appeals.

5/ This assumes that any pre-appeal screening by the trial judge which is applicable to indigents alone may be reconciled with Griffin.

In pertinent part, that section provides:

> Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend, or appeal in forma pauperis shall be paid by the United States * * *. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States <u>if the trial judge certifies that the appeal is not frivolous but presents a substantial question</u>. (Emphasis Supplied)

First of all, this provision demonstrates that when Congress wishes to require a certification of "substantial question" it so provides in unambiguous language. Furthermore, the underscored portion above indicates that Congress sought to distinguish between criminal and habeas corpus appeals on the one hand, and appeals in all other types of proceedings on the other, and provided that only in the latter is the certification of a substantial question a prerequisite to the securing of a transcript at the expense of the United States. This distinction is obliterated if, in finding the requisite "good faith," the trial judge <u>ipso facto</u> certifies the existence of a "substantial question." Yet this is precisely what has occurred. Under the prevailing practice, the District Court authorizes an appeal in forma pauperis only upon what is, in effect, a finding that "the appeal is not frivolous but presents a substantial question," so that an indigent's right to a transcript at government expense is predicated upon the identical certification reserved by § 753 (f) to "other proceedings."

The effect of defining "good faith" in terms of "substantial question" is intensified by the limited appellate review of the trial court's certificate. Thus, in <u>Wells</u> v. <u>United States</u>, 318 U.S. 257, 259 (1943), the Supreme Court held that the trial court's certificate must be "accepted * * * as controlling in the absence of some showing that the certificate is made without warrant or not in good faith."[6/] Thereafter,

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6/ The <u>Wells</u> case is silent regarding the possible unconstitutionality of the second paragraph of § 1915. The question does not appear to have been urged by the parties or considered by the Court. Moreover, whatever approval may be implicit in <u>Wells</u> must be regarded as subject to reconsideration in the light of the Court's later holding in <u>Griffin</u> v. <u>Illinois</u>, supr

in Dorsey v. Gill, 80 U.S. App. D.C. 9, 148, 169 F.2d 857, 878 (1945), cert. denied, 325 U.S. 890, this court observed that the Supreme Court in Wells probably meant to preclude review of the record, but "even making the improbable assumption" that such review was permitted "such power should be most circumspectly exercised." In a series of cases in which this court applied the Wells standard of review, leave to appeal was uniformly denied. 7/

Finally, the rigorous standard of "good faith" applied by the District Court, coupled with the limited appellate review of the trial court's certificate, inevitably denies to "destitute defendants * * * as adequate review as defendants who have money enough to buy transcripts." Griffin v. Illinois, supra. The poor man's appeal may be effectively choked off at the outset by the very one whose conduct of the trial is challenged, whereas the man with funds is faced with no such preliminary hurdle. It implies no disrespect of trial judges to say that this system is discriminatory and unfair. However well-intentioned and fair-minded a trial judge may be, it is simply contrary to human nature to expect him to view his conduct of the trial with the same dispassion as a reviewing court. Moreover, the situation was here aggravated by not providing counsel at this crucial stage. In view of all this, it is not surprising to find cases where judgments have later been reversed on the merits, although the trial judge had originally certified that no substantial question was involved. Recently, for example, this court reversed a conviction in

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7/ Waterman v. McMillan, 77 U.S. App. D.C. 310, 312, 135 F.2d 807, 808 (1943), cert. denied 322 U.S. 749; Spruill v. Temple Baptist Church, 78 U.S. App. D.C. 324, 141 F.2d 137 (1944), cert. denied 323 U.S. 755; Dorsey v. Gill, 80 U.S. App. D.C. 9, 148 F.2d 857 (1945), cert. denied 325 U.S. 890; Askins v. Overholser, 83 U.S. App. D.C. 248, 170 F.2d 815 (1948). This court's practice in criminal cases may be somewhat less rigid than these cases might imply. See, e.g., Durham v. United States, No. 12,810, decided March 29, 1956.

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United States v. Durham, (No. 12,810, decided March 29, 1956), although the trial judge had expressly held that the very point upon which the reversal was based presented no substantial question. United States v. Durham, supra. Similarly, in Walleck v. Hudspeth, 128 F.2d 343 (10th Cir. 1942), the Court of Appeals reversed a judgment of conviction, although the trial court had "made a finding that the appeal was without merit and not taken in good faith* * *." In how many other cases there would have been a similar result but for the deference given the trial judge's certificate it is impossible to say.

Hence, amicus submits that there is a "substantial question" as to whether the trial judge applied a proper standard in considering appellant's motion for leave to appeal in forma pauperis.

C. While a motion for leave to appeal in forma pauperis is first made in the District Court, if the District Court fails to act or denies the motion without certifying that the appeal is not taken in good faith, then the motion may be made directly to this court.[8/] Waterman v. McMillan, 135 F.2d 807, 808 (D.C. Cir. 1943). This court's opinion in Wheeler v. Reid, 84 U.S. App. D.C. 180, 175 F.2d 829 (1948), as well as the present order appointing amicus curiae, make clear that in exercising its discretion to permit appeals in forma pauperis this court applies the same "substantial question" test employed by the District Court. Whether it is

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8/ This, presumably, is also the situation with respect to appellant's present motion for a transcript and appointment of counsel, since the trial court's certificate was issued after notice of appeal had already been filed and the clerk's fee paid. In Walleck v. Hudspeth, 128 F.2d 343, 344 (10th Cir. 1942), the court held that "an appeal is perfected by filing a proper notice of appeal * * * [and] the appellate court thereafter has power to control the further steps * * * in perfecting and hearing the appeal." In Wells v. United States, supra, the Court specifically reserved decision on "what effect should be given to a certificate of bad faith in a case where the jurisdiction of the Circuit Court of Appeals attaches upon the mere filing of a notice of appeal independently of any application for leave to appeal in forma pauperis." 318 U.S. at 210-61. Rule 39, F.R.Crim.P.

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proper to condition an indigent's right to effective appellate review upon such a showing, or, indeed, upon any showing not required of all appellants, presents a further "substantial question." First. Indigent would-be appellants in criminal cases are required to show a substantial question before being entitled to a transcript at Government expense, although 28 U.S.C. § 753 (f) specifically requires such a showing only in other than criminal or habeas corpus proceedings. Second. Under any standard, an indigent's appeal, unlike that of an appellant with funds, may be effectively terminated without the court's ever having reviewed the transcript. This is no mere formal discrimination, for errors or defects affecting substantial rights may be noticed on appeal although not brought to the attention of the court. Rule 52 (b), F. R. Crim. P. Thus, "it has always been the custom of this court * * * in cases of serious criminal offenses, to check carefully the record for error prejudicial to defendant which he did not urge" (Tatum v. United States, 88 U.S. App. D.C. 386, 388, 190 F.2d 612, 614 (1951) and, not infrequently, reversal results. Stewart v. United States, 94 U.S. App. D.C. 293, 296, 214 F.2d 879, 882 (1954); Williams v. United States, 76 U.S. App. D.C. 299, 300, 131 F.2d 21, 22 (1942); McKenzie v. United States, 75 U.S. App. D.C. 270, 271, 126 F.2d 533, 534 (1942); Durham v. United States, No. 12,810 decided March 29, 1956.

CONCLUSION

All persons desiring to appeal a conviction should have equal opportunity to present an adequate record of their trial to this court, irrespective of differing ability to pay. For the reasons indicated, there is a substantial question as to whether the procedure employed in this case assured such equal opportunity to appellant. If it did not, the constitutional standard laid down by the Supreme Court in the Griffin case has been violated. While compliance with this standard, in this

and in other cases, might mean some additional expense to the Government, a complete transcript of the proceedings at the trial in each case may not be required. Thus, the Supreme Court was careful to point out in Griffin that the Illinois Supreme Court might "find other means of affording adequate and effective appellate review to indigent defendants," 312 U.S. at 20; and in the earlier case of Miller v. United States, 317 U.S. 192, 198 (1942), the Supreme Court likewise suggested alternative means of preparing a suitable appeal record:

> "Historically a bill of exceptions does not embody a verbatim transcript of the evidence but, on the contrary, a statement with respect to the evidence adequate to present the contentions made in the appellate court. Such a bill may be prepared from notes kept by counsel, from the judge's notes, from the recollection of witnesses as to what occurred at the trial, and, in short, from any and all sources which will contribute to a veracious account of the trial judge's action and the basis on which his ruling was invoked."

This court has the authority necessary to devise a method by which equal appeal rights may be assured to all at the least expense to the Government.

Elimination of the pre-appeal screening process that now goes on as to indigent would-be appellants need not result in a cluttering of the court's docket with frivolous appeals. The court has power under Rule 39, Fed. Rules Crim. P., to dismiss insubstantial or frivolous appeals, and this power could be freely exercised as to both indigent and non-indigent appellants. Due process does not require a hearing or opinion in all appeals; it does require that the opportunity for effective review shall not depend solely upon one's ability to pay.

Respectfully submitted,

Howard Adler, Jr.

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Receipt Acknowledged
Julius Cannell
Asst U.S. Atty
Nov 15 - 1956

Copy mailed to Appellant, Isaac P. Hill at D.C. Jail Washington, DC.
HA.

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